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Consumer Advocacy Group, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

CONSUMER ADVOCACY GROUP, INC.,  
in the public interest,

Plaintiff,

v.

EL MONTE SUPERSTORE INC., a  
California Corporation  
SHUN FAT SUPERMARKET, INC., a  
California Corporation;  
SF SUPERMARKET, INC., a California  
Corporation;  
TRANS FAMILY, INC., a California  
Corporation;  
ORIENTAL FOODBANK, INC., a  
California Corporation;  
DAI CHEONG TRADING CO, INC., a  
California Corporation;  
NORTHERN FOOD I/E, INC., a New York  
Corporation;  
SAN GABRIEL SUPERSTORE, a business  
Entity Form Unknown; and  
DOES 1-50;

Defendants.

CASE NO. 18STCV02562

PLAINTIFF CONSUMER ADVOCACY  
GROUP INC'S FIRST AMENDED  
COMPLAINT FOR PENALTY AND  
INJUNCTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
2 Defendants EL MONTE SUPERSTORE INC.; SHUN FAT SUPERMARKET, INC.; SF  
3 SUPERMARKET, INC.; TRANS FAMILY, INC.; ORIENTAL FOODBANK, INC., DAI  
4 CHEONG TRADING CO, INC., NORTHERN FOOD I/E, INC., SAN GABRIEL  
5 SUPERSTORE, and DOES 1-50 as follows:

6 **THE PARTIES**

7 1. Plaintiff, CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”), is  
8 an organization qualified to do business in the State of California. CAG is a person within the  
9 meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
10 attorney general, brings this action in the public interest as defined under Health and Safety Code  
11 section 25249.7, subdivision (d).

12 2. Defendant, EL MONTE SUPERSTORE INC (“MONTE”), is a California  
13 Corporation, doing business in the State of California at all relative times herein.

14 3. Defendant, SHUN FAT SUPERMARKET, INC. (“FAT”), is a California  
15 Corporation, doing business in the State of California at all relevant times herein.

16 4. Defendant, SF SUPERMARKET, INC. (“SF”), is a California Corporation, doing  
17 business in the State of California at all relevant times herein.

18 5. Defendant, TRANS FAMILY, INC. (“FAMILY”), is a California Corporation,  
19 doing business in the State of California at all relevant times herein.

20 6. Defendant, ORIENTAL FOODBANK, INC (“ORIENTAL”), is a California  
21 Corporation, qualified to do business and conducting substantial business in the State of  
22 California at all relevant times herein. ORIENTAL has been a registered corporation in the state  
23 of California and in good standing since 1993.

24 7. Defendant, DAI CHEONG TRADING CO, INC (“DAI”), is a California  
25 Corporation, engaging in substantial business in the State of California at all relevant times  
26 herein. As of the date this Amended Complaint is filed, DAI’s status is currently suspended  
27 according to the California Secretary of State website.

1           8. Defendant, NORTHERN FOOD I/E, INC (“NORTHERN”), is a New York  
2 Corporation, qualified to do business in the State of California, and conducting substantial  
3 business in the State of California at all relevant times herein. NORTHERN has been a registered  
4 corporation in the state of New York since 2005.

5           9. Defendant, SAN GABRIEL SUPERSTORE (“GABRIEL”), is a Business Entity  
6 Form Unknown doing business in the State of California at all relevant times herein.

7           10. Plaintiff is presently unaware of the true names and capacities of defendants  
8 DOES 1-50, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
9 this complaint to allege their true names and capacities when ascertained. Plaintiff is informed,  
10 believes, and thereon alleges that each fictitiously named defendant is responsible in some  
11 manner for the occurrences herein alleged and the damages caused thereby.

12           11. At all times mentioned herein, the term “Defendants” includes FAT, SF,  
13 FAMILY, MONTE, ORIENTAL, DAI, NORTHERN, GABRIEL, and DOES 1-50.

14           12. Plaintiff is informed and believes, and thereon alleges that each of the Defendants  
15 at all times mentioned herein have conducted business within the State of California.

16           13. Upon information and belief, at all times relevant to this action, each of the  
17 Defendants, including DOES 1-50, was an agent, servant, or employee of each of the other  
18 Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was  
19 acting within the course and scope of this agency, service, or employment, and was acting with  
20 the consent, permission, and authorization of each of the other Defendants. All actions of each  
21 of the Defendants alleged in this Complaint were ratified and approved by every other Defendant  
22 or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
23 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

24           14. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each  
25 of the Defendants was a person doing business within the meaning of Health and Safety Code  
26 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
27 employees at all relevant times.

1  
2 **JURISDICTION**

3 15. The Court has jurisdiction over this lawsuit pursuant to California Constitution  
4 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
5 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant  
6 to Health and Safety Code section 25249.7, which allows enforcement of violations of  
7 Proposition 65 in any Court of competent jurisdiction.

8 16. This Court has jurisdiction over Defendants named herein because Defendants  
9 either reside or are located in this State or are foreign corporations authorized to do business in  
10 California, are registered with the California Secretary of State, or who do sufficient business in  
11 California, have sufficient minimum contacts with California, or otherwise intentionally avail  
12 themselves of the markets within California through their manufacture, distribution, promotion,  
13 marketing, or sale of their products within California to render the exercise of jurisdiction by the  
14 California courts permissible under traditional notions of fair play and substantial justice.

15 17. Venue is proper in the County of Los Angeles because one or more of the  
16 instances of wrongful conduct occurred, and continues to occur, in the County of Los Angeles  
17 and/or because Defendants conducted, and continue to conduct, business in the County of Los  
18 Angeles with respect to the consumer product that is the subject of this action.

19 **BACKGROUND AND PRELIMINARY FACTS**

20 18. In 1986, California voters approved an initiative to address growing concerns  
21 about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
22 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed  
23 Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic  
24 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.*  
25 (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to  
26 allow consumers to make informed choices about the products they buy, and to enable persons to  
27 protect themselves from toxic chemicals as they see fit.

1           19.     Proposition 65 requires the Governor of California to publish a list of chemicals  
2 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
3 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
4 chemicals and chemical families. Proposition 65 imposes warning requirements and other  
5 controls that apply to Proposition 65-listed chemicals.

6           20.     All businesses with ten (10) or more employees that operate or sell products in  
7 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
8 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
9 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable”  
10 warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed  
11 chemical (*Health & Safety Code* § 25249.6).

12           21.     Proposition 65 provides that any person "violating or threatening to violate" the  
13 statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
14 "Threaten to violate" means "to create a condition in which there is a substantial probability that  
15 a violation will occur." *Health & Safety Code* § 25249.11(e). Defendants are also liable for civil  
16 penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety*  
17 *Code* § 25249.7(b).

18           22.     On February 27, 1987 the Governor of California added LEAD to the list of  
19 chemicals known to the State to cause developmental and reproductive toxicity, and on October  
20 1, 1992, the Governor added LEAD to the list of chemicals known to the State to cause cancer.  
21 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after  
22 addition of LEAD to the list of chemicals known to the State to cause cancer and reproductive  
23 toxicity, LEAD became fully subject to Proposition 65 warning requirements and discharge  
24 prohibitions.

25           23.     Plaintiff identified certain practices of manufacturers and distributors of products  
26 bearing LEAD, exposing, knowingly, and intentionally, persons in California to said Proposition  
27  
28

65-listed chemical without first providing clear and reasonable warnings to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

24. On October 1, 1987, the Governor of California added Cadmium and Cadmium compounds (“CADMIUM”) to the list of chemicals known to the State to cause cancer (Cal. Code Regs. tit. 27, § 27001(b)). CADMIUM is known to the State to cause cancer and developmental, male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of CADMIUM to the list of chemicals known to the State to cause cancer, CADMIUM became fully subject to Proposition 65 warning requirements and discharge prohibitions.

25. On May 1, 1997, the Governor of California added CADMIUM to the list of chemicals known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)). CADMIUM is known to the State to cause developmental, male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of CADMIUM to the list of chemicals known to the State to cause reproductive toxicity, CADMIUM became fully subject to Proposition 65 warning requirements and discharge prohibitions.

26. Plaintiff identified certain practices of manufacturers and distributors of products bearing CADMIUM of exposing, knowingly, and intentionally, persons in California to the Proposition 65-listed chemicals of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

27. On February 27, 1987, the Governor of California added Arsenic (inorganic arsenic compounds) (“ARSENIC”) to the list of chemicals known to the State to cause cancer (Cal. Code Regs. Tit §). ARSENIC is known to the State to cause Cancer. Pursuant to Health and Safety Code, twenty (20) months after addition of ARSENIC to the list of chemicals known to the State to cause cancer, ARSENIC became fully subject to Proposition 65 warning requirements and discharge prohibitions.

28. On May 1, 1997, the Governor of California added Arsenic (inorganic arsenic compounds) (“ARSENIC”) to the list of chemicals known to the State to cause reproductive toxicity (Cal. Code Regs. Tit §). ARSENIC is known to the State to cause reproductive toxicity. Pursuant to Health and Safety Code, twenty (20) months after addition of ARSENIC to the list of chemicals known to the State to reproductive toxicity ARSENIC became fully subject to Proposition 65 warning requirements and discharge prohibitions.

29. Plaintiff identified certain practices of manufacturers and distributors of products bearing ARSENIC exposing, knowingly, and intentionally, persons in California to the Proposition 65-listed chemicals of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

### SATISFACTION OF PRIOR NOTICE

30. On or about April 18, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concern consumer product exposures, subject to a private action to SF, ORIENTAL, MONTE, and to the California Attorney General, County District Attorneys, and City Attorneys for each containing a population of at least 750,000 people in whose jurisdiction the violations allegedly occurred, concerning ANCHOVIES containing LEAD, CADMIUM, and ARSENIC.

31. On or about April 20, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to FAT, FAMILY, SF, GABRIEL, NORTHERN, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning SEAWEED containing LEAD and ARSENIC.

32. On or about April 20, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to SF, MONTE, and to the California Attorney General, County District Attorneys, and

1 City Attorneys for each city containing a population of at least 750,000 people in whose  
2 jurisdictions the violations allegedly occurred, concerning DRIED SEAWEED containing LEAD  
3 and ARSENIC.

4 33. On or about April 20, 2018, Plaintiff gave notice of alleged violations of Health  
5 and Safety Code section 25249.6, concerning consumer products exposures, subject to a private  
6 action to SF, MONTE, and to the California Attorney General, County District Attorneys, and  
7 City Attorneys for each city containing a population of at least 750,000 people in whose  
8 jurisdictions the violations allegedly occurred, concerning DRIED SHRIMP containing  
9 ARSENIC.

10 34. On or about May 7, 2018, Plaintiff gave notice of alleged violations of Health and  
11 Safety Code section 25249.6, concerning consumer products exposures, subject to a private  
12 action to SF, MONTE, DAI, FAMILY, and to the California Attorney General, County District  
13 Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in  
14 whose jurisdictions the violations allegedly occurred, concerning DRIED FUNGUS containing  
15 LEAD.

16 35. On or about August 29, 2019, Plaintiff gave notice of alleged violations of Health  
17 and Safety Code section 25249.6, concerning consumer products exposures, subject to a private  
18 action to ORIENTAL, and to the California Attorney General, County District Attorneys, and  
19 City Attorneys for each city containing a population of at least 750,000 people in whose  
20 jurisdictions the violations allegedly occurred, concerning BROKEN RICE containing LEAD.

21 36. Before sending the notice of alleged violations, Plaintiff investigated the  
22 consumer products involved, the likelihood that such products would cause users to suffer  
23 significant exposures to LEAD, ARSENIC, CADIMUM, and the corporate structure of each of  
24 the Defendants.

25 37. Plaintiff's notices of alleged violations included a Certificate of Merit executed by  
26 the attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
27 Plaintiff who executed the certificate had consulted with at least one person with relevant and  
28



appropriate expertise who reviewed data regarding the exposures to LEAD, CADMIUM, and ARSENIC, the subject Proposition 65-listed chemicals of this action. Based on that information, the attorney for Plaintiff who executed the Certificate of Merit believed there was a reasonable and meritorious case for this private action. The attorney for Plaintiff attached to the Certificate of Merit served on the Attorney General the confidential factual information sufficient to establish the basis of the Certificate of Merit.

38. Plaintiff's notices of alleged violations also included a Certificate of Service and a document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

39. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notices of the alleged violation to MONTE, FAT, SF, FAMILY, ORIENTAL, DAI, NORTHERN, and GABRIEL and the public prosecutors referenced in Paragraphs 32-36

40. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor any applicable district attorney or city attorney has commenced and is diligently prosecuting an action against the Defendants.

### **FIRST CAUSE OF ACTION**

**(By CONSUMER ADVOCACY GROUP, INC. against SF, MONTE, ORIENTAL, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

#### **Anchovies**

41. Plaintiff repeats and incorporates by reference paragraphs 1 through 40 of this complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Dried Anchovies including but not limited to: "SEASONED ANCHOVIES WITH SESAME"; "IMPORTED BY: ORIENTAL FOODBANK, INC."; "COMMERCE, CA 90040"; "PRODUCT OF THAILAND"; "NET WEIGHT 3.5 OZ. (100 g.)"; "Seasoned Anchovy w/ Sesam (OP) 04988401142 6"; "UPC 049884011436"; "UPC 049884040917" ("ANCHOVIES").

1           42. Plaintiff is informed, believes, and thereon alleges that ANCHOVIES contain  
2 LEAD, CADMIUM, and ARSENIC.

3           43. Defendants knew or should have known that LEAD and CADMIUM have been  
4 identified by the State of California as a chemical known to cause cancer and reproductive  
5 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also  
6 informed of the presence of LEAD and CADMIUM in ANCHOVIES within Plaintiff's notice of  
7 alleged violations further discussed above at Paragraph 30.

8           44. Defendants knew or should have known that ARSENIC has been identified by the  
9 State of California as a chemical known to cause reproductive toxicity and therefore was subject  
10 to Proposition 65 warning requirements. Defendants were also informed of the presence of  
11 ARSENIC in ANCHOVIES within Plaintiff's notice of alleged violations further discussed  
12 above at Paragraph 30.

13           45. Plaintiff's allegations regarding ANCHOVIES concern "[c]onsumer products  
14 exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage,  
15 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that  
16 results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. ANCHOVIES  
17 are consumer products, and, as mentioned herein, exposures to CADMIUM, LEAD, and  
18 ARSENIC took place as a result of such normal and foreseeable consumption and use.

19           46. Plaintiff is informed, believes, and thereon alleges that between April 18, 2015  
20 and the present, each of the Defendants knowingly and intentionally exposed California  
21 consumers and users of ANCHOVIES, which Defendants manufactured, distributed, or sold as  
22 mentioned above, to CADMIUM, LEAD, and ARSENIC, without first providing any type of  
23 clear and reasonable warning of such to the exposed persons before the time of exposure.  
24 Defendants have distributed and sold ANCHOVIES in California. Defendants know and intend  
25 that California consumers will use and consume ANCHOVIES, thereby exposing them to  
26 CADMIUM, LEAD, and ARSENIC. Defendants thereby violated Proposition 65.

1           47.     The principal routes of exposure with regard to ANCHOVIES are and were  
2 through ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption.  
3 Persons sustained exposures primarily by eating and consuming ANCHOVIES, and additionally  
4 by handling ANCHOVIES without wearing gloves or any other personal protective equipment,  
5 or by touching bare skin or mucous membranes with gloves after handling ANCHOVIES as well  
6 as through direct and indirect hand to mouth contact, hand to mucous membrane, or even  
7 breathing in particulate matter dispersed from ANCHOVIES.

8           48.     Plaintiff is informed, believes, and thereon alleges that each of Defendant's  
9 violations of Proposition 65 as to ANCHOVIES have been ongoing and continuous to the date  
10 of the signing of this complaint, as Defendants engaged and continue to engage in conduct which  
11 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
12 promotion, and sale of ANCHOVIES, so that a separate and distinct violation of Proposition 65  
13 occurred each and every time a person was exposed to CADMIUM, LEAD, and ARSENIC by  
14 ANCHOVIES as mentioned herein.

15           49.     Plaintiff is informed, believes, and thereon alleges that each violation of  
16 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
17 violations alleged herein will continue to occur into the future.

18           50.     Based on the allegations herein, Defendants are liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to LEAD, CADMIUM, and ARSENIC from  
20 ANCHOVIES pursuant to Health and Safety Code section 25249.7(b).

21           51.     In the absence of equitable relief, the general public will continue to be  
22 involuntarily exposed to LEAD, CADMIUM and ARSENIC that is contained in ANCHOVIES,  
23 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
24 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate remedy  
25 at law.

26           52.     Plaintiff has engaged in good faith efforts to resolve the claims alleged herein  
27 prior to filing this Complaint.

1 **SECOND CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against SF, FAT, GABRIEL,**  
3 **FAMILY, NORTHERN and DOES 11-20 for Violations of Proposition 65, The Safe**  
4 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et***  
5 ***seq.*)**

6 **Seaweed Products**

7 53. Plaintiff repeats and incorporates by reference paragraphs 1 through 52 of this  
8 complaint as though fully set forth herein. Each of the Defendants is, and at all times mentioned  
9 herein was, a manufacturer, distributor, promoter, or retailer of Dried Seaweed including but not  
10 limited to: “Seaweed”; “Special Grade”; “Exported By Fuzhou Yefeng Import and Trading Co.,  
11 Ltd. Add:16f., Zhong Min BLDG.B, Yangqiao RD., Fuzhou, China”; “Net Wt: 7 oz (200.g)”;  
12 “INGREDIENT: SEAWEED”; “PRODUCT OF CHINA”; “Please Store In a Cold Dry Place” “6  
930248 600851”. (“SEAWEED”).

13 54. Plaintiff is informed, believes, and thereon alleges that SEAWEED contains  
14 LEAD and ARSENIC.

15 55. Defendants knew or should have known that ARSENIC has been identified by the  
16 State of California as a chemical known to cause reproductive toxicity and therefore was subject  
17 to Proposition 65 warning requirements. Defendants were also informed of the presence of  
18 ARSENIC in SEAWEED within Plaintiff's notice of alleged violations further discussed above  
19 at Paragraph 31.

20 56. Defendants knew or should have known that LEAD has been identified by the  
21 State of California as a chemical known to cause cancer and reproductive toxicity and therefore  
22 was subject to Proposition 65 warning requirements. Defendants were also informed of the  
23 presence of LEAD in SEAWEED within Plaintiff's notice of alleged violations further discussed  
24 above at Paragraph 31.

25 57. Plaintiff's allegations regarding SEAWEED concern “[c]onsumer products  
26 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase, storage,  
27 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that  
28 results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b). SEAWEED is

1 a consumer product, and, as mentioned herein, exposures to LEAD and ARSENIC took place as  
2 a result of such normal and foreseeable consumption and use.

3 58. Plaintiff is informed, believes, and thereon alleges that between April 20, 2015  
4 and the present, each of the Defendants knowingly and intentionally exposed California  
5 consumers and users of SEAWEED, which Defendants manufactured, distributed, or sold as  
6 mentioned above, to LEAD and ARSENIC, without first providing any type of clear and  
7 reasonable warning of such to the exposed persons before the time of exposure. Defendants have  
8 distributed and sold SEAWEED in California. Defendants know and intend that California  
9 consumers will use SEAWEED, thereby exposing them to LEAD, and ARSENIC. Defendants  
10 thereby violated Proposition 65.

11 59. The principal routes of exposure with regard to SEAWEED are and were through  
12 ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption. Persons  
13 sustained exposures primarily by eating and consuming SEAWEED, and additionally by  
14 handling SEAWEED without wearing gloves or any other personal protective equipment, or by  
15 touching bare skin or mucous membranes with gloves after handling SEAWEED as well as  
16 through direct and indirect hand to mouth contact, hand to mucous membrane, or even breathing  
17 in particulate matter dispersed from SEAWEED.

18 60. Plaintiff is informed, believes, and thereon alleges that each of Defendant's  
19 violations of Proposition 65 as to SEAWEED have been ongoing and continuous to the date of  
20 the signing of this complaint, as Defendants engaged and continue to engage in conduct which  
21 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
22 promotion, and sale of SEAWEED, so that a separate and distinct violation of Proposition 65  
23 occurred each and every time a person was exposed to LEAD, and ARSENIC by SEAWEED as  
24 mentioned herein.

25 61. Plaintiff is informed, believes, and thereon alleges that each violation of  
26 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
27 violations alleged herein will continue to occur into the future.

62. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to LEAD and ARSENIC from SEAWEED pursuant to Health and Safety Code section 25249.7(b).

63. In the absence of equitable relief, the general public will continue to be involuntarily exposed to LEAD and ARSENIC that is contained in SEAWEED, creating a substantial risk of irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused irreparable harm for which there is no plain, speedy, or adequate remedy at law.

64. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to filing this Complaint.

### **THIRD CAUSE OF ACTION**

**(By CONSUMER ADVOCACY GROUP, INC. and against SF, ZAP, MONTE and DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

#### **Dried Seaweed**

65. Plaintiff repeats and incorporates by reference paragraphs 1 through 64 of this complaint as though fully set forth herein.

66. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Dried Seaweed, including but not limited to: "HANHENG TASTE"; "DRIED SEAWEED STRIPS"; "PRODUCT OF CHINA"; "NET WEIGHT 100G (3.5OZ)"; "INGREDIENT: SEAWEED"; "PRODUCT OF CHINA"; "DISTRIBUTED BY ZAP EXPO CENTER INC; 1301 John Reed CT.; City of Industry, CA 91745; EmailLchlink3@yahoo,cn"; "Please store in a cool dry place"; UPC 6 930248 687135" ("DRY SEAWEED").

67. Plaintiff is informed, believes, and thereon alleges that DRY SEAWEED contains LEAD and ARSENIC.

68. Defendants knew or should have known that ARSENIC has been identified by the State of California as a chemical known to cause reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of

1 ARSENIC in DRY SEAWEED within Plaintiff's notice of alleged violations further discussed  
2 above at Paragraph 32.

3 69. Defendants knew or should have known that LEAD has been identified by the  
4 State of California as a chemical known to cause cancer and reproductive toxicity and therefore  
5 was subject to Proposition 65 warning requirements. Defendants were also informed of the  
6 presence of LEAD in DRY SEAWEED within Plaintiff's notice of alleged violations further  
7 discussed above at Paragraph 32.

8 70. Plaintiff's allegations regarding DRY SEAWEED concern "[c]onsumer products  
9 exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage,  
10 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that  
11 results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. DRY  
12 SEAWEED are consumer products, and, as mentioned herein, exposures to LEAD and  
13 ARSENIC took place as a result of such normal and foreseeable consumption and use.

14 71. Plaintiff is informed, believes, and thereon alleges that between April 20, 2015  
15 and the present, each of the Defendants knowingly and intentionally exposed California  
16 consumers and users of DRY SEAWEED, which Defendants manufactured, distributed, or sold  
17 as mentioned above, to LEAD and ARSENIC, without first providing any type of clear and  
18 reasonable warning of such to the exposed persons before the time of exposure. Defendants have  
19 distributed and sold DRY SEAWEED in California. Defendants know and intend that California  
20 consumers will use DRY SEAWEED, thereby exposing them to LEAD, and ARSENIC.  
21 Defendants thereby violated Proposition 65.

22 72. The principal routes of exposure with regard to DRY SEAWEED are and were  
23 through ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption.  
24 Persons sustained exposures primarily by eating and consuming DRY SEAWEED, and  
25 additionally by handling DRY SEAWEED without wearing gloves or any other personal  
26 protective equipment, or by touching bare skin or mucous membranes with gloves after handling  
27  
28

1 DRY SEAWEED as well as through direct and indirect hand to mouth contact, hand to mucous  
2 membrane, or even breathing in particulate matter dispersed from DRY SEAWEED.

3 73. Plaintiff is informed, believes, and thereon alleges that each of Defendant's  
4 violations of Proposition 65 as to DRY SEAWEED have been ongoing and continuous to the  
5 date of the signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
7 promotion, and sale of DRY SEAWEED, so that a separate and distinct violation of Proposition  
8 65 occurred each and every time a person was exposed to LEAD, and ARSENIC by DRY  
9 SEAWEED as mentioned herein.

10 74. Plaintiff is informed, believes, and thereon alleges that each violation of  
11 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 75. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to LEAD and ARSENIC from DRY SEAWEED  
15 pursuant to Health and Safety Code section 25249.7(b).

16 76. In the absence of equitable relief, the general public will continue to be  
17 involuntarily exposed to LEAD and ARSENIC that is contained in DRY SEAWEED, creating a  
18 substantial risk of irreparable harm. Thus, by committing the acts alleged herein, Defendants  
19 have caused irreparable harm for which there is no plain, speedy, or adequate remedy at law.

20 77. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein  
21 prior to filing this Complaint.

#### 22 **FOURTH CAUSE OF ACTION**

23 **(By CONSUMER ADVOCACY GROUP, INC. and against SF, MONTE, and**  
24 **DOES 31-40 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
25 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

#### 26 **Dried Seafood**

27 78. Plaintiff repeats and incorporates by reference paragraphs 1 through 77 of this  
28 complaint as though fully set forth herein.



1           79. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
2 distributor, promoter, or retailer of Dried Shrimp, including but not limited to: “t&t Dried  
3 Shrimp Tom Kho”; “Special Selection”; “NET WT. 3 oz.”; “PACKED FOR: T&T TRADING  
4 LOS ANGELES, CA 90201 USA”; “UPC 8 1069853126 3” (“SHRIMP”)

5           80. Plaintiff is informed, believes, and thereon alleges that SHRIMP contains  
6 ARSENIC.

7           81. Defendants knew or should have known that ARSENIC has been identified by the  
8 State of California as a chemical known to cause reproductive toxicity and therefore was subject  
9 to Proposition 65 warning requirements. Defendants were also informed of the presence of  
10 ARSENIC in SHRIMP within Plaintiff's notice of alleged violations further discussed above at  
11 Paragraph 33.

12           82. Plaintiff's allegations regarding SHRIMP concern “[c]onsumer products  
13 exposure[s],” which “is an exposure that results from a person's acquisition, purchase, storage,  
14 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that  
15 results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b). SHRIMP are  
16 consumer products, and, as mentioned herein, exposures to ARSENIC took place as a result of  
17 such normal and foreseeable consumption and use.

18           83. Plaintiff is informed, believes, and thereon alleges that between April 20, 2015  
19 and the present, each of the Defendants knowingly and intentionally exposed California  
20 consumers and users of SHRIMP, which Defendants manufactured, distributed, or sold as  
21 mentioned above, to ARSENIC, without first providing any type of clear and reasonable warning  
22 of such to the exposed persons before the time of exposure. Defendants have distributed and  
23 sold SHRIMP in California. Defendants know and intend that California consumers will use and  
24 consume SHRIMP, thereby exposing them to SHRIMP. Defendants thereby violated  
25 Proposition 65.

26           84. The principal routes of exposure with regard to SHRIMP are and were through  
27 ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption. Persons  
28

1 sustained exposures primarily by eating and consuming SHRIMP, and additionally by handling  
2 SHRIMP without wearing gloves or any other personal protective equipment, or by touching  
3 bare skin or mucous membranes with gloves after handling SHRIMP as well as through direct  
4 and indirect hand to mouth contact, hand to mucous membrane, or even breathing in particulate  
5 matter dispersed from SHRIMP.

6 85. Plaintiff is informed, believes, and thereon alleges that each of Defendant's  
7 violations of Proposition 65 as to SHRIMP have been ongoing and continuous to the date of the  
8 signing of this complaint, as Defendants engaged and continue to engage in conduct which  
9 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
10 promotion, and sale of SHRIMP, so that a separate and distinct violation of Proposition 65  
11 occurred each and every time a person was exposed to ARSENIC by SHRIMP as mentioned  
12 herein.

13 86. Plaintiff is informed, believes, and thereon alleges that each violation of  
14 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
15 violations alleged herein will continue to occur into the future.

16 87. Based on the allegations herein, Defendants are liable for civil penalties of up to  
17 \$2,500.00 per day per individual exposure to ARSENIC from SHRIMP pursuant to Health and  
18 Safety Code section 25249.7(b).

19 88. In the absence of equitable relief, the general public will continue to be  
20 involuntarily exposed to ARSENIC that is contained in SHRIMP, creating a substantial risk of  
21 irreparable harm. Thus by committing the acts alleged herein, Defendants have caused  
22 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

23 89. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein  
24 prior to filing this Complaint.

### 25 **FIFTH CAUSE OF ACTION**

26 **(By CONSUMER ADVOCACY GROUP, INC. and against SF, MONTE, FAMILY,**  
27 **DAI and DOES 41-45 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
28 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

## Dried Fungus

90. Plaintiff repeats and incorporates by reference paragraphs 1 through 89 of this complaint as though fully set forth herein.

91. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Dried Fungus including but not limited to: “Dried Black Fungus”; “Fortuna Brand”; “Net Wt. 2.5 oz (70 g); “Packed for: Dai Cheong Trading Co., Inc.”; “Product of China”; “UPC 0 88183 030182” (“FUNGUS”)

92. Plaintiff is informed, believes, and thereon alleges that FUNGUS contains LEAD.

93. Defendants knew or should have known that LEAD has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of LEAD in FUNGUS within Plaintiff's notice of alleged violations further discussed above at Paragraph 34.

94. Plaintiff's allegations regarding FUNGUS concern “[c]onsumer products exposure[s],” which “is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. FUNGUS is a consumer product, and, as mentioned herein, exposures to LEAD took place as a result of such normal and foreseeable consumption and use.

95. Plaintiff is informed, believes, and thereon alleges that between May 7, 2015 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of FUNGUS, which Defendants manufactured, distributed, or sold as mentioned above, to LEAD, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold FUNGUS in California. Defendants know and intend that California consumers will use FUNGUS, thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

96. The principal routes of exposure with regard to FUNGUS are and were through ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption. Persons

1 sustained exposures primarily by eating and consuming FUNGUS, and additionally by handling  
2 FUNGUS without wearing gloves or any other personal protective equipment, or by touching  
3 bare skin or mucous membranes with gloves after handling FUNGUS as well as through direct  
4 and indirect hand to mouth contact, hand to mucous membrane, or even breathing in particulate  
5 matter dispersed from FUNGUS.

6 97. Plaintiff is informed, believes, and thereon alleges that each of Defendant's  
7 violations of Proposition 65 as to FUNGUS have been ongoing and continuous to the date of the  
8 signing of this complaint, as Defendants engaged and continue to engage in conduct which  
9 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
10 promotion, and sale of FUNGUS, so that a separate and distinct violation of Proposition 65  
11 occurred each and every time a person was exposed to LEAD by FUNGUS as mentioned herein.

12 98. Plaintiff is informed, believes, and thereon alleges that each violation of  
13 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
14 violations alleged herein will continue to occur into the future.

15 99. Based on the allegations herein, Defendants are liable for civil penalties of up to  
16 \$2,500.00 per day per individual exposure to LEAD from FUNGUS pursuant to Health and  
17 Safety Code section 25249.7(b).

18 100. In the absence of equitable relief, the general public will continue to be  
19 involuntarily exposed to LEAD that is contained in FUNGUS, creating a substantial risk of  
20 irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused  
21 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

22 101. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein  
23 prior to filing this Complaint.

#### 24 **SIXTH CAUSE OF ACTION**

25 **(By CONSUMER ADVOCACY GROUP, INC. and against ORIENTAL and DOES**  
26 **46-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**  
27 **Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

#### 28 **Broken Rice**

102. Plaintiff repeats and incorporates by reference paragraphs 1 through 101 of this complaint as though fully set forth herein.

103. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Broken Rice including but not limited to: “Thai Hom Mali Broken Rice”; “Gao Tam Sol”; “Net Weight: 5 Lbs. (2.27KGS.)”; “Imported by Oriental Food Bank Inc. Commerce, CA 90040”; “UPC 0 49884 91106 4” (“RICE”).

104. Plaintiff is informed, believes, and thereon alleges that RICE contains LEAD.

105. Defendants knew or should have known that LEAD has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of LEAD in RICE within Plaintiff’s notice of alleged violations further discussed above at Paragraph 35.

106. Plaintiff’s allegations regarding RICE concern “[c]onsumer products exposure[s],” which “is an exposure that results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. RICE is a consumer product, and, as mentioned herein, exposures to LEAD took place as a result of such normal and foreseeable consumption and use.

107. Plaintiff is informed, believes, and thereon alleges that between August 29, 2016 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of RICE, which Defendants manufactured, distributed, or sold as mentioned above, to LEAD, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold RICE in California. Defendants know and intend that California consumers will use RICE, thereby exposing them to LEAD. Defendants thereby violated Proposition 65.

108. The principal routes of exposure with regard to RICE are and were through ingestion, including hand to mouth pathways, inhalation, and trans-dermal absorption. Persons

1 sustained exposures primarily by eating and consuming RICE, and additionally by handling  
2 RICE without wearing gloves or any other personal protective equipment, or by touching bare  
3 skin or mucous membranes with gloves after handling RICE as well as through direct and  
4 indirect hand to mouth contact, hand to mucous membrane, or even breathing in particulate  
5 matter dispersed from RICE.

6 109. Plaintiff is informed, believes, and thereon alleges that each of Defendant's  
7 violations of Proposition 65 as to RICE have been ongoing and continuous to the date of the  
8 signing of this complaint, as Defendants engaged and continue to engage in conduct which  
9 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
10 promotion, and sale of RICE, so that a separate and distinct violation of Proposition 65 occurred  
11 each and every time a person was exposed to LEAD by RICE as mentioned herein.

12 110. Plaintiff is informed, believes, and thereon alleges that each violation of  
13 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
14 violations alleged herein will continue to occur into the future.

15 111. Based on the allegations herein, Defendants are liable for civil penalties of up to  
16 \$2,500.00 per day per individual exposure to LEAD from RICE pursuant to Health and Safety  
17 Code section 25249.7(b).

18 112. In the absence of equitable relief, the general public will continue to be  
19 involuntarily exposed to LEAD that is contained in RICE, creating a substantial risk of  
20 irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused  
21 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

22 113. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein  
23 prior to filing this Complaint.

#### 24 **PRAYER FOR RELIEF**

25 Plaintiff demands against each of the Defendants as follows:

- 26 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 27 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 28 3. Costs of suit;

4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

**Dated:** November 11, 2019

**YEROUSHALMI & YEROUSHALMI**

BY: 

Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.